

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY ALAN SMITH,

Defendant-Appellant.

UNPUBLISHED

October 11, 2005

No. 259831

Schoolcraft Circuit Court

LC No. 2004-006386-FH

Before: O’Connell, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of operating a motor vehicle while intoxicated, third offense (OWI 3d), MCL 257.625(1)(b), and operating a motor vehicle with a suspended license, second or subsequent offense (DWLS 2d), MCL 257.904(1). Defendant was sentenced as a second habitual offender, MCL 769.11, to concurrent terms of one year and six months to eight years in prison for the OWI 3d conviction and one year in jail for the DWLS 2d conviction. We affirm.

On appeal, defendant contends that the evidence was insufficient to support his convictions. Specifically, defendant argues that the prosecution failed to prove that he was operating a motor vehicle on the night in question. We disagree. In reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). “Circumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of the offense.” *People v Richardson*, 139 Mich App 622, 625; 362 NW2d 853 (1984).

Defendant argues that the officers falsely identified him as the driver of a pick-up truck. Nevertheless, the arresting officers testified that they both knew defendant from previous encounters, and so they were able to identify him as the driver of the pick-up truck when they first saw it. The officers further testified that, after briefly losing sight of the truck, they were able to catch up with it and identify it as the vehicle they had just seen defendant driving. Both officers testified that they saw it stop in a parking lot, and that they saw defendant climb out of it. They did not see anyone else near the truck. One of the officers further testified that defendant told him that he owned the truck. From this evidence a rational trier of fact could conclude beyond a reasonable doubt that defendant was driving the pick-up truck.

Defendant argues that the officers had to look up into the windows of the pick-up truck from their patrol car while the pick-up truck's lights shone in their eyes, rendering their initial identification unreliable. Defendant further argues that their later identification of defendant exiting the vehicle was unreliable because they saw the culprit from a distance. However, these issues were brought out at trial, and the jury had the opportunity to determine the officers' veracity and reliability. We will not reexamine the jury's determination of credibility. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). Moreover, the prosecution was not required to disprove defendant's theory of the case, so defendant's argument that the prosecution failed to disprove alleged exculpatory facts, such as the coolness of the truck's hood or the lack of keys on defendant's person, does not demonstrate insufficient evidence. *People v Hardiman*, 466 Mich 417, 423-424; 646 NW2d 158 (2002).

Affirmed.

/s/ Peter D. O'Connell

/s/ David H. Sawyer

/s/ William B. Murphy